

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ISABELLA NARTEY,)	
)	
Plaintiff,)	Case No. 18-cv-5327
)	
v.)	Judge Sharon Johnson Coleman
)	
FRANCISCAN HEALTH,)	
)	
Defendant.)	
)	

MEMORANDUM OPINION AND ORDER

Plaintiff Isabella Nartey (the “Plaintiff”) filed a twenty-five count Corrected Amended Complaint against Franciscan Health alleging various claims related to the medical care and treatment of her mother, Millicent Nartey (“Nartey”). Franciscan moves to dismiss Nartey’s Corrected Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). The Court held oral argument on June 5, 2019. For the reasons outlined below, Franciscan’s Motion to Dismiss [37] is granted.

Background

On August 3, 2016, Nartey was transported via ambulance to the emergency department at Franciscan after experiencing weakness and an elevated blood pressure. Plaintiff and her other family members informed Franciscan that Nartey had a history of high blood pressure and opted not to control it with prescribed medications due to adverse side effects. Franciscan’s emergency medical team screened Nartey and initiated treatment upon her arrival in the emergency room. The emergency medical team identified that Nartey’s potassium levels were low, her heart displayed evident damage, and her current condition mandated additional diagnostic tests. Nartey was subsequently admitted to the intensive care unit at Franciscan for further tests and overnight

observation due to concern for Nartey's cardiac condition and potential stroke. Nartey's native language was the West African language TWI. Plaintiff informed a nurse in the Franciscan intensive care unit that although English was not her native language, Nartey "understood and could converse in English, but ... the Franciscan medical team may need to speak more slowly and calmly." (Dkt. 33-1 at ¶ 28(e).) Indeed, Nartey at one point requested to leave Franciscan in English. Plaintiff also indicated that she and other family members were available to translate as the need arose.

Although a CT scan and several other exams did not show any signs of stroke, Nartey's medical providers were concerned that she may be "trending towards a stroke" based on neurological exams. (Dkt. 33-1 at ¶ 35.) Plaintiff and Nartey's other family members declined certain other medical care, such as the placement of a "trach tube," and inquired about discharging Nartey. (*Id.* at ¶¶ 40–41.) Plaintiff was informed that due to the possibility of Nartey suffering a stroke Nartey could not be discharged before additional testing was completed, including a swallow test, additional CT scan, and MRI. Nartey's husband was contacted as power of attorney for Nartey prior to performing additional tests and the MRI.

After being informed that the MRI showed signs of severe ischemic stroke, Plaintiff inquired about transferring her mother to another facility. Plaintiff alleges that the Franciscan neurologist told her that there was no need to inconvenience Nartey with a hospital transfer. Another Franciscan representative told Plaintiff that a transfer was unlikely due to Nartey's care plan. Plaintiff subsequently provided paperwork seeking to transfer Nartey to the University of Chicago, Loyola University, and other hospitals, but the requests to transfer were denied by the other facilities due to financial and insurance reasons. Although an apnea test was delayed following Plaintiff's request (so that Nartey's husband could be present when the results were known), Nartey was found to be clinically brain dead on August 17, 2016, and subsequently passed away. Plaintiff requested in

writing and received Narthey's medical records. In January 2019, Plaintiff discovered that Franciscan omitted or excluded various "key documents" from Narthey's medical records.

Plaintiff alleges claims pursuant to Emergency Medical Treatment and Active Labor Act ("EMTALA"), Title VI of the Civil Rights Act of 1964, and fraudulent concealment of medical negligence allegedly arising from the medical treatment provided to Narthey in August 2016 at Franciscan. Franciscan now moves to dismiss the Corrected Amended Complaint for failure to state a claim.

Legal Standard

When considering a Rule 12(b)(6) motion, the court accepts all of the plaintiff's allegations as true and views them "in the light most favorable to the plaintiff." *Lavalais v. Vill. of Melrose Park*, 734 F.3d 629, 632 (7th Cir. 2013). A complaint must contain allegations that "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). Pro se motions, particularly, should be construed liberally. *Otis v. Demarasse*, 886 F.3d 639, 644 (7th Cir. 2018). However, "even pro se litigants must follow rules of civil procedure." *Cady v. Sheahan*, 467 F.3d 1057, 1061 (7th Cir. 2006). The plaintiff does not need to plead particularized facts, but the allegations in the complaint must be sufficient to "raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007).

Analysis

Franciscan first contends that Narthey fails to state a claim for violations of EMTALA because the purpose of EMTALA is to protect patients from being denied emergency treatment due to an inability to pay and Plaintiff alleges that Narthey was examined and screened in compliance with the Act. Plaintiff responds that Franciscan violated its EMTALA duties to screen, treat, stabilize, and transfer Narthey by failing to comply with national and community standards of care. Where an

emergency condition exists, “the patient may not be transferred to another hospital or discharged until he or she has received stabilizing treatment.” *Curry v. Advocate Bethany Hosp.*, 204 F. App’x 553, 556 (7th Cir. 2006) (citing 42 U.S.C. § 1395dd).

A plaintiff can plead herself out of court by pleading facts that undermine the allegations in her complaint. *Curry*, 204 F. App’x at 556. Plaintiff has done that with respect to her EMTALA claims. She alleges that Franciscan screened Narthey and initiated treatment upon her arrival at the emergency room. Specifically, after an hour in the emergency room, the Franciscan emergency medical team identified Narthey’s low potassium levels and existing damage on her heart and determined additional diagnostic tests that it would perform. Due to concern for Narthey’s cardiac condition and potential stroke, Franciscan subsequently admitted Narthey to its intensive care unit for further tests and overnight observation. Thus, by pleading that Franciscan determined that Narthey had an emergency medical condition, Plaintiff necessarily asserts that Narthey received screening as required by EMTALA. *See Woessner v. Freeport Mem’l Hosp.*, No. 91 C 20005, 1992 WL 88302, at *3 (N.D. Ill. Apr. 24, 1992) (Reinhard, J.); 42 U.S.C. § 1395dd(b).

Plaintiff further alleges that Franciscan failed to stabilize or transfer Narthey as required by EMTALA. Here, too, Plaintiff has alleged facts that undermine these allegations. Plaintiff alleges that Narthey’s medical providers conducted neurological exams that indicated she may be “trending towards a stroke” and recommended placing a “trach tube,” which Plaintiff declined on behalf of Narthey. Due to the possibility of Narthey suffering a stroke, Franciscan informed Plaintiff that Narthey could not be discharged before additional testing was completed, including a swallow test, CT scan, and MRI. Franciscan also informed Plaintiff that transferring Narthey to another hospital likely would not be possible due to Narthey’s care plan. Still, Plaintiff requested that Franciscan transfer Narthey to another medical facility. Franciscan could not transfer Narthey because the requests were denied by the other facilities due financial and insurance reasons. A hospital cannot

legally transfer a patient to a facility that had not agreed to accept her transfer. *See* 42 U.S.C. § 13955dd(c)(2). Following the denials, Franciscan continued to provide care to Narthey.

EMTALA does not require that the treatment satisfy any national or community standard of care, and Franciscan's actions demonstrate that it continued to treat Narthey. *See Smith v. St. James Hosp. & Health Centers*, No. 02 C 2953, 2003 WL 174195, at *3 (N.D. Ill. Jan. 27, 2003) (Andersen, J.). "EMTALA is not a federal malpractice statute," so even if Franciscan may have misdiagnosed Narthey, EMTALA does not provide an avenue to recover for her unsuccessful treatment. *Curry*, 204 F. App'x at 556. Thus, Plaintiff's allegations for failure to stabilize also fail because Franciscan provided ongoing care to Narthey, beginning with her admission to the hospital. The Court dismisses Counts I–IXX.

Next, Franciscan asserts that Plaintiff fails to set forth a claim under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, because Plaintiff only includes conclusory allegations without any facts supporting that Narthey was intentionally discriminated against based on her language proficiency. Plaintiff responds that Franciscan acknowledged Narthey's limited English proficiency, but failed to assess her understanding and did not accommodate Narthey. Title VI provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. To receive protection, a plaintiff must allege proof of intentional discrimination. *Dunnet Bay Const. Co. v. Borggren*, 799 F.3d 676, 697 (7th Cir. 2015).

Here, Plaintiff has once more alleged facts contrary to her allegations that Narthey was intentionally discriminated against based on her language proficiency. Although English was not Narthey's native language, Plaintiff alleges that Narthey "understood and could converse in English" and that Narthey asked to leave the hospital in English. Further, Plaintiff alleges that she and other

family members could translate for Franciscan staff members, if needed. Together these allegations demonstrate that Narthey was able to communicate with her care providers at Franciscan. The Corrected Amended Complaint fails to allege plausible factual allegations of intentional discrimination. The Court dismisses Counts XX–XXII.

Finally, Franciscan contends that Plaintiff's claims for fraudulent concealment are impermissibly duplicative, fail to meet the requirements of a state law medical negligence claim, and fail to state a claim. Narthey responds that the Corrected Amended Complaint states the circumstances constituting fraud with particularity and that she is not alleging that Narthey's damages arose through medical malpractice.

Claims XXIII–XXV each allege facts seeking damages for death by reason of hospital malpractice. Illinois law requires a party asserting a claim for medical malpractice to file an affidavit declaring that the affiant reviewed the facts of the case with a health professional and a report from the professional concluding that there is a meritorious claim of medical neglect or stating an acceptable reason why such an opinion and report could not be obtained. *See* 735 ILCS 5/2-622(a); *see also Williams v. Erickson*, 21 F. Supp. 3d 957, 958 (N.D. Ill. 2013) (Kennelly, J.). The statute requires that “failure to file a certificate required by this Section shall be grounds for dismissal.” 735 ILCS 5/2-622(g); *see also Hahn v. Walsh*, 762 F.3d 617, 628–29 (7th Cir. 2014). No version of the complaint has contained the affidavit, the report, or any explanation regarding why it was absent, although the Corrected Amended Complaint states that Plaintiff “understands that Illinois courts required a medical affidavit of merit to bring forth claims of negligence, medical malpractice, and wrongful death.” (Dkt. 33-1 at 62.) Plaintiff has not filed the certificate, and Counts XXIII–XXV are dismissed.

Even if Plaintiff could survive the state affidavit requirement, her complaint fails to state a claim for fraudulent concealment. To allege fraudulent concealment, Plaintiff must allege: (1) the

concealment of a material fact; (2) the concealment was intended to induce a false belief, under circumstances creating a duty to speak; (3) the innocent party could not have discovered the truth through a reasonable inquiry or inspection, or was prevented from making a reasonable inquiry or inspection, and relied upon the silence as a representation that the fact did not exist; (4) the concealed information was such that the injured party would have acted differently had she been aware of it; and (5) that reliance by the person from whom the fact was concealed led to her injury. *Taylor v. Feinberg*, No. 08-CV-5588, 2009 WL 3156747, at *6 (N.D. Ill. Sept. 28, 2009) (Lefkow, J.) (citing *Schrager v. N. Cmty. Bank*, 328 Ill. App. 3d 696, 706–07, 767 N.E.2d 376 (1st Dist. 2002)).

Plaintiff alleges that she obtained incomplete medical records for Nartey, but does not allege that any omission from the medical records was intended to cover up actions taken during Nartey's medical treatment at Franciscan. Further, Plaintiff alleges that she discovered the omitted documents herself, demonstrating that she was able to discover the "truth" through a reasonable inspection. Counts XXIII–XXV also fail to state a claim.

Conclusion

Based on the foregoing, Defendant's Motion to Dismiss [37] is granted. If Plaintiff believes that she can cure the deficiencies in her Corrected Amended Complaint, she may file amended papers with the Court within 30 days of the date of this Order.

IT IS SO ORDERED.

Date: 7/11/2019

Entered: _____



SHARON JOHNSON COLEMAN
United States District Court Judge